S.B. CIVIL REVISION PETITION NO.347/2005

Shanti Lal. vs. Mangi Lal & Ors.

Date : 18.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. SL Jain, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 4.8.2005 by which the executing court issued directions to the judgment debtors to open the water outlet which has been closed by them in violation of the terms of the decree obtained by the decree holder.

According to learned counsel for the petitioner/ judgment debtor, after the judgment and decree of the trial court, the P.W.D. constructed a road and at that time, the court below has passed the order to keep a pipeline so that water flow of decree holder may not be obstructed. In view of the above, according to learned counsel for the petitioner, now the decree cannot be executed.

It is also submitted that the petitioner's father's sister obstructed the water flow and she was not party in the suit and, therefore also, the petitioner cannot comply with the direction issued by the court below.

I have considered the submissions of learned counsel

for the petitioner.

It is clear from the facts mentioned above itself that the plaintiff obtained decree which was challenged by the judgment debtor by filing appeal and the appeal was dismissed. The right to have the water flow in the manner in which the plaintiff set up the case, was accepted by the court and the suit was decreed. Not only this but even thereafter when the P.W.D. constructed the road, the right of the decree holder was protected by the order of the Court and a way was kept for the water flow by the P.W.D. also. The trial court observed that the Commissioner was appointed and he reported that half of the outlet has been closed and the level has also been changed which obstructs the water blow.

In view of the above, the objection raised on the ground that Smt. Radha Bai was not party in the suit and no decree has been passed against Smt. Radha Bai is absolutely irrelevant in as much as, the decree was passed against the judgment debtor and he is in position to remove the said obstruction and therefore, the petitioner has no right to take shelter behind Smt. Radha Bai and the plea of the petitioner that he is not in possession of the land cannot be accepted as whether the decree could have been passed against the petitioner on the ground that he is not in possession of the land and therefore, he cannot be directed to allow water flow, is a pre-decree matter and the plea of the petitioner not being in possession could have been a

defence of the petitioner in the suit for not passing the decree against him.

Accordingly, I do not find any merit in this revision petition and the same is hereby dismissed.

The order now may be complied within a period of ten days from today. This time has been granted without prejudice to the right of the other party except that the petitioner may not have to face civil imprisonment for non-compliance of the court's order.

(PRAKASH TATIA), J.

S.Phophaliya